

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWIN GONZALEZ and U.S. POSTAL SERVICE,
GRAND CENTRAL STATION POST OFFICE, New York, NY

*Docket No. 98-2531; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any disability after October 16, 1997 causally related to his August 14, 1994 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he had any disability after October 16, 1997 causally related to his August 14, 1994 employment injury.

On August 14, 1994 appellant, then a 46-year-old supervisor, sustained chondromalacia of the right patella while in the performance of duty.

By decision dated October 16, 1997, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits after that date on the grounds that the weight of the medical evidence, as represented by the opinion of the impartial medical specialist, established that appellant had no continuing disability due to his August 14, 1994 employment injury. By letter dated October 29, 1997, appellant requested an oral hearing before an Office hearing representative. On April 21, 1998 a hearing was held before an Office representative at which time appellant testified. By decision dated July 13, 1998, the Office representative affirmed the Office's October 16, 1997 decision.

In a report dated June 19, 1995, Dr. Norman Sveilich, appellant's attending orthopedic surgeon, related that appellant had undergone arthroscopic surgery on June 16, 1995 with findings of a medial meniscus tear and chondromalacia of the medial femoral condyle and that a partial medial meniscectomy and chondroplasty was performed. In a report dated December 28, 1995, Dr. Sveilich indicated that appellant could work eight hours a day with restrictions.

In a report dated May 24, 1996, Dr. Anthony A. Cirillo, an orthopedic surgeon and Office referral physician, provided a history of appellant's condition and findings on examination and stated his opinion that appellant could perform his regular work without restrictions.

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹

By letter dated July 9, 1996, the Office properly referred appellant, together with a statement of accepted facts and medical records, to Dr. Joseph S. Mulle, a Board-certified orthopedic surgeon, for an impartial medical examination and evaluation in order to resolve the conflict in medical opinion as to whether appellant had any remaining disability or medical condition causally related to his August 14, 1994 employment injury.

In a report dated July 31, 1996, Dr. Mulle provided a history of appellant's condition, a summary of the medical records and findings on examination and stated, "[Appellant's] findings at this time are those of advancing degenerative arthritis of the medial compartment of the right knee joint. Aggressive degenerative change can be anticipated with walking and standing."

In an October 31, 1996 addendum to his July 31, 1996 report, Dr. Mulle stated:

"The arthritis in the medial compartment of the knee is not related to the injury on August 14, 1994. The MRI [magnetic resonance imaging] [scan] findings includes cystic changes in the medial femoral condyle and anterior portion of the tibial plateau. This condition is the result of genu varus deformity (bow legs) that allows for uneven distribution of weight onto the medial side of the knee. This is exhibited by the lateral thrust noted in walking. The excessive body weight is a significant factor. The degenerative changes are inevitable in this type knee and body weight."

* * *

"I do not feel that the accident of August 14, 1994 produced his condition which in my opinion was predestined."

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.²

The Board finds that the thorough and well-rationalized reports of the impartial medical specialist, Dr. Mulle, are entitled to special weight and these reports establish that appellant had no residual disability or medical condition after October 16, 1997 causally related to his August 14, 1994 employment injury.

In a form report dated October 12, 1997, received by the Office on October 29, 1997, Dr. Sveilich diagnosed status post tibial osteotomy of the right knee and indicated that appellant

¹ 5 U.S.C. § 8123(a).

² *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

could perform only light duty. He indicated by checking the block marked “yes” that the condition was causally related to appellant’s 1994 employment injury. However, the Board has held that an opinion on causal relationship which consists only of checking “yes” to a form report question on whether the claimant’s disability was related to the history given is of little probative value.³ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁴ Therefore, the opinion of Dr. Sveilich is not sufficient to overcome the weight of the opinion of Dr. Mulle, the impartial medical specialist, as he was on one side of the conflict Dr. Mulle was selected to resolve.

The decisions of the Office of Workers’ Compensation Programs dated July 13, 1998 and October 16, 1997 are affirmed.

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁴ *Id.*